Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 302	)	CS Docket No. 96-46
of the Telecommunications Act	)	
of 1996	)	
Open Video Systems	)	

COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

USTA applauds the Commission for acting rapidly to implement the open video system provisions of the Telecommunications Act of 1996. The intent of the Telecom Act is to promote competition by limiting regulation of open video systems. The open video system option is an entirely new statutory construct for entering the video market. For open video systems to become a viable entry option, the Commission should not add to the obligations of open video system operators. Burdensome rules would eliminate open video systems as a viable video entry option for LECs.

Given the precision with which Congress established the open video system framework, the Commission should, to the fullest possible extent, codify the statutory framework in its rules. The Commission should grant wide latitude to operators in complying with open video system requirements. Section 653's enforcement and dispute resolution provisions are the basis for addressing problems in the implementation of open video systems.

There is no need for the Commission to regulate the rates for open video system carriage. The Telecom Act adequately protects programmers from intentional and unjust discrimination in allocation of capacity and channel positioning; open video system operators should not be required to make public their contracts with programmers. Application of Title VI obligations and other rules designed for the cable environment must not disadvantage open video system operators relative to cable operators. Certification procedures for open video systems should be streamlined, without preliminary filing requirements. The Commission should not mandate procedures for notification or enrollment of programmers.

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I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned docket.[1/] USTA is the principal trade association of the local exchange carrier (LEC) industry, with over 1,100 members of various sizes.

USTA applauds the Commission for acting rapidly to implement the open video system provisions of the Telecommunications Act of 1996 (the "Telecom Act"), as required by the

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1/ *Implementation of Section 302 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CS Docket 96-46, FCC 96-99, (rel. March 11, 1996) ("*Notice*").

statute.[2/] The timely adoption of concise regulations implementing these provisions is critical to ensuring that open video systems become a viable option for LEC entry into the video marketplace.

The member companies of USTA have participated in the video marketplace for many years in many ways. Small rural USTA members have long operated cable systems. They began as cable operators under the "rural exemption" to the telephone-cable cross ownership restriction formerly in the Communications Act of 1934 (the "1934 Act"), which was repealed in Section 302(b) of the Telecom Act,[3/] and continue their operations today. All of the LECs that filed applications under the Commission's video dialtone rules, also eliminated by the Telecom Act,[4/] are USTA members. Medium-sized and large LECs are also operating "wireless cable" systems and constructing stand-alone cable systems. LECs are engaged in major programming ventures. In addition, LECs have traditionally made common carrier transmission service available to cable operators.

In light of such diverse participation in the video marketplace, USTA is hopeful that open video systems will provide another avenue for video competition that will benefit the public. Because of the many different avenues available to LECs to participate in the video marketplace, the Commission's implementation of the open video system concept will

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2/ Under subsection 653(b)(1), the Commission is required to "complete all actions necessary (including any reconsideration) to prescribe regulations" implementing the requirements of Section 653 within six months of enactment of the Telecom Act.

3/ Telecom Act at § 302(b)(1).

4/ Id. at § 302(b)(3).

determine whether it will provide the benefits to the public that increased video competition and innovation can bring.

II. THE INTENT OF THE TELECOM ACT IS TO PROMOTE COMPETITION BY LIMITING REGULATION OF OPEN VIDEO SYSTEMS

A core objective of the Telecom Act is to "encourage entry"[5/] by common carriers into the video marketplace. The Telecom Act does so by giving LECs (and other common carriers) multiple video entry options. A LEC may: (1) provide video programming as a cable system operator under Title VI of the Communications Act; (2) provide video programming using radio communication technologies, such as Multichannel Multipoint Distribution Service (MMDS); (3) provide video programming by means of an open video system; and (4) provide transmission of video programming on a common carrier basis under Title II of the Communications Act.

In contrast to the other entry options established by the Telecom Act, the open video system model is an entirely new statutory construct. In deciding how to enter the video market, LECs already possess a large measure of regulatory certainty under the other options. The same degree of certainty regarding flexibility is urgently needed with respect to the obligations of open video system operators. Absent such certainty, LECs will focus on the other entry options.

5/ *See* Telecommunications Act of 1996 Conference Report, S. Rep. 104-230 at 177 (Feb. 1, 1996)("*Conference Report*").

The future viability of the open video system option depends even more heavily on how the Commission implements the open video system provisions of the Telecom Act. USTA respectfully urges the Commission to implement these provisions in a manner that fulfills the Telecom Act's goal of granting LECs and others flexibility to design and operate their open video systems. The Commission should avoid imposing additional regulatory obligations on open video system operators beyond the already detailed requirements enumerated in the statute.

There is no need or basis for the Commission to attempt to develop extensive *a priori* regulations governing open video systems, which by their nature would limit the opportunities that a flexible open video system regime could bring. In deciding how to address the issues raised in the *Notice*, the Commission should be guided by the clearly expressed intent of Congress. As the Commission states, any regulations it adopts in this proceeding must be consistent with "Congress' goals of flexible market entry, enhanced competition, streamlined regulation, diversity of programming choices, investment in infrastructure and technology, and increased consumer choice."[6/] These goals are the yardsticks against which the regulatory alternatives outlined in the *Notice* should be measured.

Congress itself saw the need to limit the regulatory obligations of open video system providers, in order to "encourage common carriers to deploy open video systems and

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6/ *Notice* at ¶ 4.

introduce vigorous competition in entertainment and information markets."[7] Congress also recognized that "common carriers that deploy open systems will be 'new' entrants in established markets and deserve lighter regulatory burdens to level the playing field."[8] Following the intent of Congress, the Commission should streamline to the maximum possible extent all of its open video system regulations.

In addition, Congress clearly intended that all of the video entry options established by the statute should be viable alternatives for LEC participation in the video marketplace. Congress recognized that "telephone companies need to be able to choose from among multiple video entry options,"[9] and that establishing multiple options would "promote competition," "encourage investment in new technologies," and "maximize consumer choice."[10] If an entry option is less attractive -- and thus less viable -- than the others, because of regulatory burdens associated with pursuing that option, then Congress' goals will not be fulfilled. Furthermore, Congress made it clear that a LEC's choice among the options, in each particular market, should be driven by the particular "strategies, services and technologies" the LEC decides to pursue "for entering video markets,"[11] rather than by regulatory considerations. Indeed, the

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7 *Conference Report* at 178.

8 *Id.*

9 Id. at 177.

10 Id. at 172.

11 Id. at 172.

Commission's rules should allow open video system operators the freedom to "tailor their services to meet the unique competitive and consumer needs of individual markets."[12/]

Congress' decision to repeal the Commission's video dialtone regime, and its directive that open video systems will not be subject to regulation under Title II of the 1934 Act,[13/] provide additional guidance to the Commission. USTA participated extensively in the Commission's efforts to permit LECs, to the extent allowed under the old law, to participate in the video programming market through the provision of video dialtone service. Unfortunately, the Commission regulated video dialtone as a common carrier service. The resulting regulatory burdens and obligations imposed on LECs seeking to enter the video dialtone market significantly delayed their entry and hindered their ability to compete with incumbent monopoly cable TV operators, which sought to "game" the regulatory process. Examples of the regulatory obligations that undermined video dialtone included the Section 214 application process, the tariffing process (including cost support requirements), and burdensome cost accounting requirements. As discussed in more detail below, USTA urges the Commission to avoid the pitfalls of video dialtone by freeing itself, and new entrants that elect to offer open video systems, from vestiges of the restrictive regulatory practices that were eliminated when the Telecom Act repealed the video dialtone regime.

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12 *Conference Report* at 177.

13 Telecom Act at § 653(b)(3).

III. IMPOSITION OF ADDITIONAL REGULATORY BURDENS WOULD THWART CONGRESS' INTENT THAT OPEN VIDEO SYSTEMS BE A VIABLE VIDEO ENTRY OPTION

Section 653 of the Telecom Act establishes an unusually detailed statutory framework for the establishment and operation of open video systems. It specifies that an open video system operator:

- Is prohibited from discriminating among video programmers with respect to carriage on its system;
- Must provide carriage on its system at rates, terms, and conditions that are just, reasonable, and not unjustly or unreasonably discriminatory;
- May not occupy more than one-third of the system's activated channels if demand for carriage exceeds capacity; and
- Is prohibited from discriminating with regard to information provided to subscribers for the purpose of selecting programming.

Section 653 also establishes a 10-day Commission certification process, under which open video systems may be exempted from certain Title VI obligations, and a dispute resolution mechanism to resolve disputes concerning open video systems. In addition, Section 653 allows open video system operators to require channel sharing. It extends to the distribution of video programming over open video systems the Commission's sports exclusivity, network nonduplication, and syndicated exclusivity rules; subjects open video systems to Sections 613 (except for subsection (a)), 616, 623(f), 628, 631, and 634 of the 1934 Act; and directs the Commission to adopt regulations applying to open video systems "obligations that are no greater or lesser than the obligations" imposed on cable TV operators under Sections 611, 614, 615, and 325 of the 1934 Act.

A. The Commission Should Not Add to the Obligations of Open Video System Operators

Section 653 of the Telecom Act balances the requirements imposed on open video system providers with limited regulatory incentives designed to encourage common carriers to operate such systems. This careful balance seeks to preserve the viability of the open video system option relative to the other alternatives, particularly the option to provide video programming as a cable operator. But the balance would tip decisively away from the open video system option if the Commission adopted onerous regulations implementing the statutory requirements imposed on open video systems, or regulations that go beyond those specifically contemplated by the Telecom Act.

Given the precision with which Congress established the open video system framework, the Commission should, to the fullest possible extent, simply codify the statutory framework in its rules. While policy guidance is required from the Commission on a limited number of issues, the Commission must ensure that any rules it does adopt in this proceeding do not have the effect of adding to the requirements already imposed on open video system operators by the statute. In fulfilling its obligation to ensure that the rates, terms, and conditions for carriage on open video systems are just and reasonable, and not unjustly or unreasonably discriminatory the Commission can and should rely on market incentives and the need for open video system operators to compete with incumbent cable operators and other multichannel video programming distributors.

Similarly, the Commission should allow open video system operators wide latitude in managing the allocation of channel capacity and channel sharing arrangements on their open video systems. As suggested in the *Notice*, the Commission's rules should simply prohibit open video system operators from discriminating against unaffiliated programmers with regard to carriage on their systems. The Commission should rely on the dispute resolution framework established by the Commission to resolve any disputes related to channel allocation or other issues.

B. Burdensome Commission Rules Would Eliminate Open Video Systems As a Viable Video Entry Option for LECs

USTA recognizes that the open video system model provides certain public interest benefits that may not be available under all of the other options. Given these benefits, LECs and others should be given every incentive to choose this option. This will only happen if the Commission exercises restraint in this proceeding and declines to impose on open video system operators the additional burdens and obligations adumbrated in the *Notice*. In the *Notice*, the Commission states that by seeking comment on various issues, it does "not mean to imply that we will find it necessary to adopt rules addressing each of the issues raised."[14/] The viability of the open video system model depends on the Commission deciding not to do so.

Congress sought to make the open video system option attractive by reducing, to a limited extent, the Title VI obligations to which an operator will be subject upon Commission

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[14] *Notice* at ¶ 4.

certification of its open video system. But despite these efforts, the fact is that the balance of incentives and obligations tips only barely, if at all, in favor of the open video system option. An open video system operator must provide capacity on its system to unaffiliated video programmers. Further, if demand for carriage exceeds the system's capacity, the operator may not use more than one-third of the system's activated channels for its own programming. In contrast, a traditional cable operator would, with limited exceptions, decide what programming to carry on its system. This ability to select all of the programming on the system under the cable option is preferable to the open video system alternative, in which the total number of channels that the operator may program are limited.

Moreover, an open video system operator would gain only modest regulatory relief. The only significant advantage it would gain is exemption from the requirement that it obtain a cable franchise in each municipality it wishes to serve. Yet the operator "may be subject" to pay a gross revenue fee to each municipality in lieu of the franchise fee.[15/] Further, as discussed above, the open video system operator would be required to comply with many of the regulatory obligations to which cable operators are subject under Title VI of the Communications Act. In short, there are limited regulatory incentives for a LEC to choose the open video system option. Under these circumstances, the imposition of any additional regulatory burdens, such as rate regulation, would tip the balance decisively away from this option.

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[15] Telecom Act at § 653(c)(2)(B).

IV. THE COMMISSION SHOULD GRANT OPERATORS WIDE LATITUDE IN COMPLYING WITH OPEN VIDEO SYSTEM REQUIREMENTS

A. Section 653's Enforcement and Dispute Resolution Provisions Are the Basis for Addressing Problems in the Implementation of Open Video Systems

In USTA's view, the mechanism for dispute resolution and Commission enforcement established under Section 653(a)(2) is central to the open video system framework established by Congress. This mechanism, which is specific to open video systems, gives the Commission the power to resolve disputes, require carriage, or award damages. The Commission is required to resolve a dispute within 180 days after it receives notice of the dispute. This enforcement power is sufficient to ensure that open video system operators comply with the nondiscrimination provision and other requirements of Section 653. The assurance of rapid Commission action, and the risk of damages, will be highly effective in deterring open video system providers from violating their statutory obligations.

A strong and effective dispute resolution mechanism as contemplated in the Telecom Act is an additional reason for the Commission to codify with little elaboration the statute's open video system requirements. Specific implementation issues should be addressed on a case-by-case basis through the dispute resolution process, rather than through the adoption of extensive *a priori* regulations that may or may not address every potential controversy or theoretical dispute that could arise. A case-by-case approach is particularly appropriate in a circumstance, such as this one, where a new and untested model for the provision of video programming services is being implemented.

As a practical matter, USTA believes that parties should be permitted to make good faith efforts to resolve disputes on a private basis before seeking a forum or redress before the Commission. Doing so is consistent with widespread commercial practice. An initial private resolution requirement will limit frivolous complaints before the Commission and will save scarce Commission resources. Moreover, open video system operators and other parties can readily make arrangements, such as the use of nondisclosure agreements, to share information needed to resolve disputes on a private basis.

The Commission should also develop minimal (and clear) due process requirements governing the resolution of disputes under subsection 653(a)(2). USTA supports the use of alternative dispute resolution (ADR) mechanisms. If more formal processes are needed, USTA suggests that the Commission consider simplifying the cable program access adjudication procedures as a model for such requirements.[16/] While USTA is concerned that those procedures may still be too time-consuming for resolution of disputes within 180 days, they appear to be more flexible than, for example, the "formal complaint" process now in place under Section 208 of the Communications Act, which clearly is not geared to the resolution of disputes within such a deadline.

The dispute resolution requirements adopted by the Commission should protect the parties' proprietary information, including contracts between open video system operators and

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[16/] See, e.g., 47 CFR § 76.1003.

programmers. Such protection is particularly important in the case of a dispute involving open video systems, which are likely to be in direct competition with incumbent cable operators.[17]

B. There is No Need and No Basis For the Commission to Regulate the Rates for Open Video System Carriage

Section 653 requires the Commission to ensure that "rates, terms, and conditions" for carriage of programming are just and reasonable, and are not unjustly or unreasonably discriminatory. USTA urges the Commission to codify this requirement and otherwise, conclude that no further action is required to ensure that the rates charged for open video system carriage meet this requirement.

For the reasons enumerated by the Commission in the *Notice*, rate regulation of open video system carriage is unnecessary and unwise.[18] As an initial matter, Congress "specifically provided that open video system operators shall not be regulated as common carriers."[19] As such, they should not be subject to common carrier-type rate regulation. Further, "open video system operators generally will be 'new' entrants in established video programming distribution markets, lacking in market power vis-a-vis video programming end

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[17] USTA notes that the Commission recently commenced a proceeding examining these important issues. Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Notice of Inquiry and Notice of Proposed Rulemaking, GC Docket No. 96-55, FCC 96-109 (rel. Mar. 25, 1996).

[18] *Notice* at ¶ 29.

[19] *Id.*

users and subject to competition from the incumbent cable operator"[20] and other multichannel video programming providers. Finally, under the Telecom Act, a cable TV operator serving a franchise area in which a open video system operator establishes an open video system will be freed from rate regulation immediately when the open video system operator begins providing programming over the system (provided that the programming is comparable to that provided by the cable operator).[21]

The statutory requirement that open video system rates be just and reasonable, and not unreasonably discriminatory, does not mandate ongoing Commission regulation of an open video system provider's rates. In the interstate interexchange services market, the Commission has repeatedly concluded that because nondominant interexchange carriers lack market power, their rates cannot be unjust or unreasonable, and such carriers are unable to discriminate unreasonably. Consistent with this view, the Commission proposed recently to exercise its new power under the Telecom Act to forbear from imposing unnecessary regulations by prohibiting nondominant interexchange carriers from filing tariffs.[22]

Recognizing that open video systems are not common carriage, the same policy analysis applies. Potential suppliers of programming to the open video system operator have multiple alternative distribution channels for their programming, including cable TV operators,

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[20] *Id.*

[21] Telecom Act, § 301(b)(3).

[22] *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Docket No. 96-61, FCC 96-123 (rel. Mar. 25, 1996)

Direct Broadcast Satellite providers, and MMDS operators. This competition alone is sufficient to ensure that open video system operator rates for open video systems will be just and reasonable. Where, as in this case, a multichannel video programming provider lacks market power relative to programming suppliers, market forces operate effectively to constrain the provider's rates and practices, making regulation unnecessary.

As a practical matter, operators will not choose the open video systems option if the rates for this high-risk venture are subject to regulation. This is particularly clear, for example, from the fact that a LEC that chooses the cable option will not, in most circumstances, be subject to any rate regulation of its cable services. The benefits -- to providers and the public -- for choosing the open video system option should be commensurate with the risks.

Finally, not subjecting open video systems to *a priori* rate regulation is fully consistent with legislative intent. This is clear from the fact that Congress exempted open video systems that have been certified by the Commission from cable rate regulation.

USTA supports the Commission's suggestion that "providing the [open video system] operator flexibility to establish pricing mechanisms in the first instance may be the best way to encourage entry into the video marketplace through an open video system."[23/] To the extent that any Commission supervision of the rates for carriage on open video systems is required on an ongoing basis, the dispute resolution mechanism established under subsection 653(a)(2) is

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23/ *Notice* at ¶ 31. As noted above, granting open video system operators such pricing flexibility will, at best, only place them on a regulatory par with cable TV operators.

sufficient to protect potential programmer-customers from unjust, unreasonable, or unjustly discriminatory rates charged by open video system operators.

C. The Statute Adequately Protects Programmers from Intentional and Unjust Discrimination in Allocation of Capacity and Channel Positioning

USTA supports the Commission's proposal to codify the statutory prohibition barring open video system operators from discriminating among unaffiliated programmers in the allocation of capacity on their systems. However, USTA opposes the tentative conclusion that open video system operators should be required to make their contracts with all programmers publicly available, disclosing rates charged and other terms and conditions. Depending on its implementation, such mandatory disclosure appears to be similar to a Title II tariff filing requirement reminiscent of the terminated video dial tone proceeding. The Telecom Act does not contemplate such a requirement. Public disclosure of such contracts would have serious anticompetitive effects by informing competitors of open video systems operators' business arrangements. As discussed, USTA supports effective enforcement of the statute by the Commission rather than unwarranted regulation.

USTA also supports the Commission's tentative conclusion that "open video system operators should be permitted to administer the allocation of channel capacity."[24/] It would be unwise and unnecessarily burdensome for the Commission to pre-ordain any particular approach to the channel allocation issue. The general prohibition against discrimination,

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[24/] *Notice* at ¶ 11.

coupled with the dispute resolution mechanism, is sufficient to protect the interests of unaffiliated programmers seeking capacity on an open video system.

Given the uncertainty surrounding the potential network architectures and service arrangements for open video services, it would be inappropriate for the Commission to adopt a specific approach to the channel allocation issue. A specific approach is not likely to encompass all possible issues that may arise. Furthermore, Commission and industry experience with the implementation of proposed video dialtone systems demonstrated that a wide range of approaches exist to manage the allocating and sharing of channels. The Commission should allow open video system operators to experiment with various schemes with respect to open video systems. Thus, open video system operators should be permitted to devise and implement their own channel allocation and channel positioning schemes, or delegate these responsibilities to a third party, subject to the general nondiscrimination requirement.

That said, the Commission should provide clear guidance on several specific matters related to channel allocation. The Commission asked for comments on how it should handle a situation in which a open video system operator has selected programming occupying more than one-third of the capacity of an affiliated open video system, but subsequent demand for carriage causes the system's capacity to be exceeded. The Commission correctly recognized "[the] strong public interest in establishing some level of certainty in service providers'

expectations with respect to their ability to retain channel capacity once allocated."[25] The best way to protect this interest is not to require an open video system operator to relinquish any capacity at least until the term of any contract under which it obtains programming provided over the capacity to be relinquished has expired.

Moreover, while Section 653(b)(1)(B) states that if demand exceeds capacity, a carrier may not select programming occupying more than one-third of the activated channel capacity of its open video system, the subsection also states that nothing in this provision "shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide to subscribers." The Commission interprets this additional provision as a clarification that "the operator or its affiliate should be permitted to market to subscribers a service package consisting of the programming it selects on its one-third of the system capacity and programming selected by other, unaffiliated video programming providers."[26] USTA does not disagree with this interpretation.

In addition, USTA believes that Section 653(b)(1)(B) is also intended to clarify that the one-third limit applies to the "activated channel capacity" of the open video system, and not to the number of channels of programming that are provided over the system. USTA supports the Commission's tentative conclusion that any channels that an open video system operator is required to carry under the public, educational, and governmental access and must carry obligations imposed upon it by the statute "should not be counted against the one-third of

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[25] *Notice* at ¶ 25.

[26] *Notice* at ¶ 27.

capacity" on which the operator is allowed to select the programming.[27] As the Commission points out, the operator in no way "selects" the required programming. In this regard, however, USTA believes that the calculation in footnote 34 to the *Notice* is inconsistent with the foregoing tentative conclusion.[28]

D. Application of Obligations Designed For The Cable Environment Must Not Disadvantage Open Video System Operators

As the Commission recognized in the *Notice*, the Telecom Act applies to open video systems certain Title VI obligations and other rules that were developed to address issues posed by cable television systems and the programming they carry. Thus the Telecom Act extends to video programming offered over open video systems the Commission's sports exclusivity, network nonduplication, and syndicated exclusivity rules. It also applies to open video system operators the must-carry/retransmission consent, PEG, and program access requirements, among others.

With respect to sports exclusivity, network nonduplication, and syndicated exclusivity, the principal obligations appear to fall on the programmers carried on the open video system;

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[27] *Notice* at ¶ 19.

[28] USTA believes that if PEG and must-carry obligations are not counted against the one-third of activated channel capacity that the LEC or its affiliate may select, in an open video system with 90 channels, 15 of which are devoted to must-carry and PEG requirements, the operator would be entitled to select the programming on one-third of the total capacity -- that is, 30 channels. This is consistent with the definition of "activated channels" in Section 602 of the 1934 Act, which does not distinguish PEG channels from other capacity. See 47 USC § 602(1).

the system operator has the ministerial function of executing the programmers' decisions regarding program carriage pursuant to these rules and contracts established with programmers.

"Must-carry," retransmission consent, and PEG access requirements raise difficult implementation issues. The difficulty stems from the fact that open video systems differ markedly from the cable systems for which these regulations were defined. To ensure that open video systems are a viable option in the marketplace, the Commission should focus on the competitive effects of implementation proposals. Doing so will best satisfy the statutory mandate that such obligations on open video systems must be "no greater or lesser" than those to which cable systems are subject.

The program access rules should be applied to open video system operators, but further regulation is not necessary at this time. Because of the competitive importance of these rules, open video system operators should receive the benefits of the program access rules while being subject to burdens no greater than those imposed on cable operators.

E. Certification Procedures For Open Video Systems Should Be Streamlined, Without Preliminary Filing Requirements

USTA believes that in order to comply with the intent as well as the requirements of the Telecom Act, the certification described in new Section 653 should be brief and the Commission should process such certifications on a streamlined basis. In certifying pursuant to Section 653(a)(1), a open video system operator should be required to provide basic identification information, the state or states in which the open video system is to operate, and

a statement that the operator of the open video system complies or intends to comply with the Commission's regulations regarding such systems.[29/] No more information is necessary or should be required in the certification itself.

Moreover, no preliminary filing requirement of "showings" to support the certification should be adopted. The statute does not contemplate such filings or showings; it merely requires a simple certification and expedited decisional process by the Commission. The additional burdensome regulatory requirements should not be grafted onto the statutory certification scheme. To do so would hinder the competition, flexibility, and increased consumer choice that Congress sought in developing the open video system option.

In the *Notice*, the Commission also seeks comment on whether a LEC that chooses to be an open video service operator should be required, as a condition of Commission certification of its open video platform, to file amendments to its Cost Allocation Manual segregating its costs of providing video programming over the open video platform from its costs of providing regulated telecommunications services.[30/] This is precisely the type of redundant regulation that the Commission should not impose. The cost allocation rules of Part 64 are already in place to address joint LEC provision of common carrier and non-common-carrier services.[31/]

[29/] *Cf.*, *Conference Report* at 177-78.

[30/] *Notice* at ¶ 70.

[31/] The Commission should avoid repeating the experience of the video dialtone proceeding, in which cost allocation issues became the major cause of delay and uncertainty.